

DATE: September 23, 1988

SUBJECT: Nativity Scene in Balboa Park
REQUESTED BY: John Lockwood, City Manager
PREPARED BY: John W. Witt, City Attorney

On September 21, 1988 I received your request for a legal opinion regarding an August 2, 1988 letter from Charles Ballanger representing Americans United for Separation of Church and State. Mr. Ballanger asks several questions regarding the City's policies in connection with Christmas displays in Balboa Park.

I received a copy of that letter in early August. At that time I assigned a deputy, Ms. Mary Kay Jackson, to research the law on that subject. A copy of her memo to me dated August 31, 1988 is attached.

As you can see, Ms. Jackson's memo to me reaches the conclusion that the display can be legally allowed in the Park if the suggestions as outlined in the summary of the memo are followed. I agree with Ms. Jackson's analysis and adopt it as my opinion and advice to you.

There must be no City financial aid or support, disclaimer signs must be prominently displayed, storage must be on private property, and the Christmas Committee must apply for and receive a regular use permit to erect the display. Thus, it would be my recommendation that you issue a policy statement setting forth these criteria as indicated.

Respectfully submitted,
JOHN W. WITT
City Attorney

JWW:MKJ:mrh:263.1(x043)

Attachment

LO-88-2